

9 FAM 41.34 NOTES

(CT:VISA-1791; 12-27-2011)
(Office of Origin: CA/VO/L/R)

9 FAM 41.34 N1 CW NONIMMIGRANT VISA FOR TRANSITIONAL WORKERS IN THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS (CNMI)

(CT:VISA-1791; 12-27-2011)

- a. The Consolidated Natural Resources Act of 2008 (CNRA), Public Law 110-229, extends U.S. immigration laws to the Commonwealth of the Northern Mariana Islands (CNMI), including transition provisions unique to the CNMI. These CNMI-only provisions are in effect during a transition period concluding December 31, 2014.
- b. The CNRA authorized the Department of Homeland Security (DHS) to classify an alien as a CNMI-only nonimmigrant transitional worker (CW) under 48 U.S.C. 1806(d). DHS regulations determine the eligibility requirements for this CW status at 8 CFR 214.2(w). Individuals who qualify as CW transitional workers may apply for a CW-1 nonimmigrant visa.
- c. Any applicant for a CW-1 nonimmigrant visa must be the beneficiary of an approved Form I-129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker, filed with U.S. Citizenship and Immigration Services (USCIS).

9 FAM 41.34 N1.1 Approved Petition is Prima Facie Evidence of Entitlement to CW Classification

(CT:VISA-1791; 12-27-2011)

- a. An approved Form I-129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker, is to be considered as prima facie evidence that the requirements for CW classification, examined in the petition process, are met. Consular officers do not have the authority to question the approval of CW petitions without specific evidence, unavailable to DHS at the time of petition approval, that the beneficiary may not be entitled to CW status.

- b. You must verify all petition approvals through the Petition Information Service (PIMS) in the Consular Consolidated Database (CCD), under the Nonimmigrant Visa tab. If no record of the petition is found in PIMS, posts may use the Person Centric Query Service (PCQS), in the CCD under the Cross Applications tab, to verify that the petition has been approved. If post finds a petition approval in PCQS that was not in PIMS, the post should send an email to PIMS@state.gov as follows: Petition with Receipt Number EAC1234567890 was found in PCQS but not in PIMS.

9 FAM 41.34 N1.2 Overview of Eligibility Requirements for the CW Nonimmigrant Visa

(CT:VISA-1791; 12-27-2011)

- a. Although an approved Form I-129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker, is prima facie evidence of entitlement to CW classification (see 9 FAM 41.34 N1.1), the following is an overview of the CW Transitional Worker status. For the full list of requirements, see 8 CFR 214.2(w).
- b. Transitional workers eligible for CW-1 status are those who:
 - (1) Are the beneficiary of an approved Form I-129CW petition filed by a legitimate employer (see 8 CFR 214.2(w)(2)(ii));
 - (2) Will enter or remain in the CNMI to work in an occupational category designated as needing alien workers to supplement the resident workforce (see 8 CFR 214.2(w)(2)(i));
 - (3) Are either lawfully present in the CNMI or are not present in the United States (see 8 CFR 214.2(w)(2)(iii) and (iv));
 - (4) Are ineligible for any other employment-based nonimmigrant status under the INA (see 8 CFR 214.2(w)(2)(vi)); and
 - (5) Are otherwise admissible to the United States or have been granted a waiver of each applicable ground of inadmissibility (8 CFR 214.2(w)(2)(v)).
- c. An alien is lawfully present in the CNMI if, at the time the application for status is filed, s/he was lawfully admitted or paroled into the CNMI under the immigration laws on or after the transition program effective date, i.e., November 28, 2009 (other than an admission or parole as a visitor for business or pleasure) and remains in a lawful immigration status. CW-2 nonimmigrant status is available to spouses and minor children of CW-1 beneficiaries (see 9 FAM 41.34 N1.6 c) (see 8 CFR 214.2(w)(3)).
 - (1) Spouses and minor children eligible for CW-2 status are those who are:

- (a) Accompanying or following-to-join the CW-1 beneficiary;
 - (b) Not present in the United States other than in the CNMI;
 - (c) If present in the CNMI, lawfully present; and
 - (d) Otherwise admissible under the INA or granted a waiver of each applicable ground of inadmissibility.
- (2) CW-2 status does not authorize employment but holders may apply for other INA nonimmigrant or immigrant visas under which employment is authorized.
- (3) A CW-2 minor child must be under 18 years of age.

9 FAM 41.34 N1.3 CW-1 Employment Restrictions

(CT:VISA-1791; 12-27-2011)

- a. A CW-1 Transitional Worker may only work in the CNMI for the employer that is the basis for his or her approved I-129CW petition.
- b. An alien requires a new or amended petition if there are any material changes in the terms and conditions of employment.
- c. A change of employment to a new employer requires a new petition. The individual may start work for the new employer as soon as the new employer files a nonfrivolous petition before the date of expiration of his or her authorized period of stay, provided that he or she has not been employed without authorization in the United States (including the CNMI) subsequent to his or her lawful admission.
- d. A CW-1 applicant working for more than one employer must have an approved petition for each employer.
- e. If you find that a CW applicant has violated any of the employment authorization restrictions above, you must suspend action on the application and submit a report to the approving USCIS office.
- f. If employment terminates, the CW-1 holder will not be considered to be in violation of CW-1 status for a period of 30 days immediately following the date of termination, but only if a prospective employer files a nonfrivolous I-129CW petition and the CW-1 holder does not otherwise violate the terms and conditions of his or her status during that 30-day period. Consistent with 8 CFR 214.2(w)(7)(i) and (ii), within that 30-day period, the CW-1 may commence employment with an employer that petitions on his or her behalf during that 30 day period.

9 FAM 41.34 N1.4 CW Classification Valid Only for Travel To/Use in CNMI

(CT:VISA-1791; 12-27-2011)

- a. Except as provided in 9 FAM 41.31 N1.4 paragraph b (below), a CW visa is valid only for travel to the CNMI. An alien with CW status or traveling on a CW visa may neither travel to nor transit any other part of the United States.
- b. An alien who is a national of the Philippines traveling on a CW visa may travel from the Philippines through the Guam airport in direct transit to the CNMI on a direct itinerary with a stopover or connection in Guam (and no other place) lasting no longer than 8 hours. A Philippine national in CW status may similarly transit the Guam airport en route to the Philippines.

9 FAM 41.34 N1.5 Departing From and Returning to the CNMI

(CT:VISA-1791; 12-27-2011)

A CW-1 or CW-2 nonimmigrant may leave the CNMI, but he or she must have the appropriate visa to re-enter the CNMI. If the CW worker was granted CW status in the CNMI or has a CW visa that will expire prior to returning to the CNMI, the CW worker must apply for a CW visa at a U.S. embassy or consulate abroad before seeking readmission to the CNMI. If the CW-1 or CW-2 status is obtained while in the CNMI, the nonimmigrant will be given a Form I-94, Arrival-Departure Record as documentation of CW status.

9 FAM 41.34 N1.6 Validity of CW Visas

(CT:VISA-1791; 12-27-2011)

- a. CW-1 status is valid for a period of up to one year. While the CW-1 nonimmigrant may be admitted for the period of petition validity and additionally up to 10 days before the validity period begins and 10 days after the validity period ends, the visa status only authorizes employment during the validity period of the petition.
- b. To request an extension of stay in CW-1 nonimmigrant status, the employer must file a new petition. If the alien's prior visa and petition have expired, the alien is not eligible to receive a new visa until the pending petition has been approved.
- c. CW-2 status expires on the same day as the principal's CW-1 status or (in the case of a minor child) on a minor child's 18th birthday. It may be extended when the principal's CW-1 status is extended.
- d. The CW classification will cease to exist at the conclusion of the CNRA-mandated transition period on December 31, 2014 unless the CW

transitional worker program is extended by the U.S. Secretary of Labor. Transitional workers who wish to remain in the CNMI lawfully beyond the end of the CW transitional worker program must obtain nonimmigrant or immigrant status under the INA before the expiration date of the program.

9 FAM 41.34 N2 E-2C NONIMMIGRANT VISA FOR LONG-TERM INVESTORS IN THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS (CNMI)

(CT:VISA-1791; 12-27-2011)

- a. The Consolidated Natural Resources Act of 2008 (CNRA), Public Law 110-229, extended U.S. immigration laws to the Commonwealth of the Northern Mariana Islands (CNMI), including transition provisions unique to the CNMI. These CNMI-only provisions are in effect during a transition period concluding December 31, 2014.
- b. The CNRA authorized the Department of Homeland Security (DHS) to classify an alien as a E-2 CNMI Investor (E-2C) under INA 101(a)(15)(E)(ii). See 48 U.S.C. 1806(c). DHS regulations that set forth the eligibility requirements for this status can be found at 8 CFR 214.2(e)(23). Those aliens qualified as E-2 CNMI Investors may apply for an E-2C nonimmigrant visa.
- c. Any applicant for an E-2C nonimmigrant visa must be the beneficiary of an approved Form I-129, Petition for a Nonimmigrant Worker and Supplement E, filed with U.S. Citizenship and Immigration Services (USCIS) before January 18, 2013.
- d. If an applicant meets the criteria for E-2C status, apply only the provisions contained in 9 FAM 41.34 N2 and not the E-2 Treaty Investor classifications.

9 FAM 41.34 N2.1 Approved Petition is Prima Facie Evidence of Entitlement to E-2C Classification

(CT:VISA-1791; 12-27-2011)

- a. An approved Form I-129, Petition for a Nonimmigrant Worker and Supplement E, are to be considered as prima facie evidence that the requirements for E-2C classification, examined in the petition process, are met.
- b. You do not have the authority to question the approval of E-2C petitions

without specific evidence, unavailable to DHS at the time of petition approval, that the beneficiary may not be entitled to status.

- c. You must verify all petition approvals through the Petition Information Service (PIMS) in the Consular Consolidated Database (CCD), under the Nonimmigrant Visa tab. If no record of the petition is found in PIMS, posts may use the Person Centric Query Service (PCQS), in the CCD under the Cross Applications tab, to verify that the petition has been approved. If post finds a petition approval in PCQS that was not in PIMS, the post should send an email to PIMS@state.gov as follows: Petition with Receipt Number EAC1234567890 was found in PCQS but not in PIMS.
- d. You must suspend action on an alien's application and submit a report to the approving USCIS office if you know or have reason to believe that an alien applying for a visa under 48 U.S.C. 1806(c) is not entitled to the classification as approved.

9 FAM 41.34 N2.2 Overview of Eligibility Requirements for the E-2C Nonimmigrant Visa

(CT:VISA-1791; 12-27-2011)

- a. Although an approved Form I-129, Petition for a Nonimmigrant Worker and Supplement E, are prima facie evidence of entitlement to E-2C status (see 9 FAM 41.34 N2.1), the following is an overview of the CNMI-Only E-2 nonimmigrant investor status. For the full list of requirements, see 8 CFR 214.2(e)(23).
- b. Investors eligible for E-2C status are those who:
 - (1) Were lawfully admitted to the CNMI in long-term investor status under CNMI immigration laws before the beginning of the transition period on November 28, 2009;
 - (2) Have continuously maintained residence in the CNMI (see 9 FAM 41.34 N2.2 d);
 - (3) Are otherwise admissible to the United States under the INA; and
 - (4) Maintain the investment(s) that formed the basis for the CNMI long-term investor status.
- c. An alien may be eligible for E2-C status through three categories:
 - (1) Long-term business investor: An alien who has an approved investment of at least \$50,000 in the CNMI, as evidenced by a CNMI Long-Term Business Certificate;
 - (2) Foreign investor: An alien in the CNMI who has invested either a minimum of \$100,000 in an aggregate approved investment in

excess of \$2,000,000, or a minimum of \$250,000 in a single approved investment, as evidenced by a CNMI Foreign Investment Certificate;

- (3) Retiree Investor: An alien in the CNMI who is over the age of 55 years; **and**
 - (a) Has invested a minimum of \$100,000 in an approved residence on the island of Saipan or \$75,000 on the islands of Tinian or Rota, proven with issuance of a foreign retiree investment certificate; **or**
 - (b) Has invested a minimum of \$150,000 in an approved residence to live in the CNMI, as evidenced by a Foreign Retiree Investment Certificate.
- d. An alien has continuously maintained residence in the CNMI if s/he has maintained his/her residence within the CNMI since being lawfully admitted as a long-term investor and has been physically present therein for periods totaling at least half of that time. Absence from the CNMI for any continuous period of more than six months but less than a year after a lawful admission breaks the continuity of such residence, unless the alien can establish to the satisfaction of USCIS that s/he did not in fact abandon residence in the CNMI during that period. Absence from the CNMI for any period one year or more during the period for which continuous residence is required breaks the continuity of residence.
- e. Spouses and children of E-2C beneficiaries:
 - (1) The spouse and children of an E-2 CNMI Investor may receive E-2C classification if (1) otherwise admissible and (2) accompanying or following-to-join the principal alien.
 - (2) The spouse of an E-2 CNMI Investor, unless the principal E-2 CNMI Investor is a Retiree Investor (see 9 FAM 41.34 N2.2 c 3), is eligible to apply to DHS for employment authorization in the CNMI under 8 CFR 274a.12(c)(12).

9 FAM 41.34 N2.3 E-2C Employment Restrictions

(CT:VISA-1791; 12-27-2011)

- a. An E-2 CNMI Investor may only work in the CNMI for the enterprise that is the basis for his/her CNMI Foreign Investment Certificate or Long-Term Investment Certificate, to the extent that the certificate authorized the employment.
 - (1) An E-2 CNMI Investor whose status is based upon a CNMI Foreign Retiree Investor Certificate is not authorized to be employed in the CNMI.

- (2) An unauthorized change of employment to a new employer constitutes a violation of status.
- b. If you find that an E-2C applicant has violated any of the employment authorization restrictions above, you must suspend action on the application and submit a report to the approving USCIS office.

9 FAM 41.34 N2.4 E-2C Classification Valid Only for Travel To/Use In CNMI

(CT:VISA-1791; 12-27-2011)

An E-2C visa is valid only for travel to the CNMI. An alien traveling on an E-2C visa may neither travel to nor transit any other part of the United States.

9 FAM 41.34 N2.5 Intent to Leave CNMI

(CT:VISA-1791; 12-27-2011)

See 9 FAM 41.51 N15.

9 FAM 41.34 N2.6 Validity of E-2C Visas and Intention to Leave CNMI

(CT:VISA-1791; 12-27-2011)

- a. E-2C status is initially valid for a period of not more than two years and may be extended in not more than two year increments. If the alien's prior visa and petition have expired, the alien is not eligible to receive a new visa until approval of a new petition.
- b. No E-2C visa will be valid past December 31, 2014, the conclusion of the CNRA-mandated transition period.